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July 30, 2002

VIA HAND DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, N.E.
Suite 110
Washington, D.C. 20002

RE: WCB/Pricing 02-12
Notice of Oral Ex Parte

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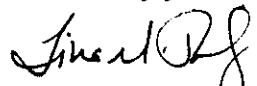
JUL 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Ms. Dortch:

On July 29, 2002, the undersigned, on behalf of General Communication, Inc. (GCI), spoke by telephone separately with Tamara Preiss and Jeff Dygert of the Wireline Competition Bureau's Pricing Policy Division regarding Tariff FCC No. 1, Transmittal No. 13, filed by ACS of Anchorage, Inc. The substance of those discussions are reflected in the attached Petition to Suspend and Investigate.

Sincerely yours,


Tina M. Pidgeon

cc: Tamara Preiss
Jeff Dygert
via electronic mail

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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JUL 30 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
July 2, 2002)	WCB/Pricing 02-12
Annual Access Charge Tariff Filings)	DA 02-970
)	
ACS of Anchorage, Inc.)	Transmittal No. 13
Tariff FCC No. 1)	
)	

PETITION OF GCI TO SUSPEND AND INVESTIGATE

General Communication, Inc. ("GCI"), by its undersigned attorneys and pursuant to Section 204(a)(1) of the Communications Act and Section 1.773 of the Commission's rules,¹ hereby petitions the Commission to suspend ACS of Anchorage, Inc. ("ACS") Tariff F.C.C. No. 1, Transmittal No. 13, which was submitted on July 29, 2002,² and order an investigation to be consolidated with the pending investigation of ACS' 2002 Annual Access Tariff Filing.³

ACS submitted its 2002 Annual Access Tariff Filing on June 17, 2002, reporting a forecasted demand of 436,005,751,⁴ over 60 million minutes less than its reported 2001 local

¹ 47 U.S.C. § 204(a)(1); 47 C.F.R. § 1.773.

² ACS of Anchorage, Inc., Tariff FCC No. 1, Transmittal No. 13 (filed July 29, 2002) ("ACS Revised 2002 Annual Access Tariff Filing").

³ ACS of Anchorage, Inc., Tariff FCC No. 1, Transmittal No. 11 (filed June 17, 2002) ("ACS 2002 Annual Access Tariff Filing").

⁴ ACS 2002 Annual Access Tariff Filing TRP, DMD-1 at 3, col. A, line 230; ACS 2002 Cost Support, Attachment H at 1.

switching demand.⁵ GCI demonstrated in its Petition to Suspend and Investigate that there was no support for this precipitous drop in demand, and based on limited data provided by ACS in its Description and Justification and Tariff Review Plan reporting prior annual minutes of use, that the forecasted amount should at least exceed 483,497,419.⁶ On July 1, 2002, the Pricing Policy Division suspended the ACS tariff, finding that “substantial questions of lawfulness exist that warrant further investigation.”⁷

Now, in an apparent attempt to avoid that investigation, ACS has filed a revised demand forecast of 460,543,402 for the period July 2002 to June 2003.⁸ This revised demand is the result of a totally changed approach in forecast methodology, still unaccompanied by any output, and still containing basic errors in the calculation as described by ACS. In sum, ACS has generated an entirely new demand forecast for the test year period, and as such, the instant tariff filing raises the same issues as those raised in the pending investigation of the ACS 2002 Annual Access Tariff Filing.⁹ Because the forecast methodology and the results therefrom are precisely

⁵ Id. at 3, col. A, line 220 (reporting 2001 PYCOS local switching demand of 499,778,595).

⁶ GCI Petition to Suspend and Investigate, WCB/Pricing 02-12 (filed June 24, 2002) at 2-9 (“GCI Petition to Suspend and Investigate”).

⁷ 2002 Annual Access Tariff Filings, WCB/Pricing 02-12, Order, DA 02-1555 (rel. July 1, 2002) at ¶ 7.

⁸ ACS Revised 2002 Annual Access Tariff Filing, Description and Justification (“D&J”) at 3.

⁹ GCI also notes that ACS has yet to make any adjustment to address overearnings that have already been reported for the first half of the 2001-2002 monitoring period. For the same reasons identified in GCI’s June 24, 2002 Petition to Suspend and Investigation, this issue also raises a substantial question of lawfulness requiring investigation. As ACS has concluded, when a carrier’s “monitoring report indicates that it is in fact exceeding its allowed rate of return, the Commission may prohibit the carrier from ‘continu[ing] to charge [that rate] *during a future*’
(continued...)

the issues that are the subject of the pending investigation — and the instant filing fails to resolve those issues — GCI urges the Commission to suspend the tariff for one day and incorporate it into the pending investigation.¹⁰

ARGUMENT

The Commission should suspend and investigate ACS' Transmittal No. 13 because ACS' revised demand calculation of the July 2002-June 2003 test year still understates demand across all per minute switched access elements, and as a result, its rates for these elements are unlawful. First, ACS appears to have discarded its prior methodology in favor of a "new forecasting method for switched access minutes of use"¹¹ without explanation. Second, like its earlier methodology, ACS has done so without producing the actual results or output of the regression now performed or key data for analyzing the results of this latest approach. Finally, ACS' use of monthly MOU in its new forecasting approach, rather than normalizing the billing period according to the average minutes of use per day, produces inconsistent minute counts that call into question the revised demand forecast. At bottom, though ACS' current filing happens to

(..continued)

period, and may 'prescrib[e] a reasonable rate *as to the future*' for the purpose of keeping its earnings within permissible limits." Final Reply Brief of ACS, No. 01-1059 at 20 (D.C. Cir. filed Jan. 10, 2002) (citing Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996, Report and Order, 12 FCC Rcd 2170, 2182 (1997) ("Streamlined Tariff Order"), pets. for recon. pending) (emphasis in original).

¹⁰ See ALASCOM, INC., Tariff F.C.C. No. 11, Transmittal No. 1184, 16 FCC Rcd 19 (Comp. Pric. Div. 2000) (incorporating new tariff filing into pending tariff investigation because the new filing "raises that same issues regarding rate levels, rate strictures, and terms and conditions of service"); Transmittal No. 1260, 17 FCC Rcd 24 (Comp. Pric. Div. 2001) (same). Though the Commission could also institute a separate investigation of the latest ACS tariff filing, it must still determine the refund that is due to ACS customers under the pending investigation.

¹¹ D&J at 1.

show an increase in the demand forecast, an investigation is still called for to review ACS' latest choice of methodology, which still yields a forecast almost 40 million minutes less than its reported actual demand for 2001.

1. As an initial matter, ACS has changed its forecast methodology without explanation, and there is no basis to conclude that ACS' new approach is a sound one simply because today's chosen methodology produced a higher number than the last one. On June 17, 2002, ACS claimed that it employed "[a] linear regression model using access lines as an independent variable . . . to forecast Traffic sensitive switched access minutes of use."¹² Suddenly, on July 29, 2002, ACS apparently changed its methodology as described in the D&J accompanying that filing, abandoning the methodology it purported to use since at least 1996 and it defended in its Opposition to GCI's Petition as "the one that provides the most reasonable projection of [its] actual experience in the upcoming tariff period."¹³

In doing so, ACS apparently adopted GCI's position that the inputs for the demand forecast analysis must be adjusted to account for misdirected traffic. As GCI described in its Petition to Suspend, around August of 2000, AT&T Alascom implemented network changes to permit it to determine the correct local carrier to which its interstate traffic should be delivered, and as a result, AT&T Alascom began to deliver interstate traffic destined to GCI local customers directly to the appropriate GCI switch.¹⁴ GCI estimated for 1998, 1999, and 2000 the interstate minutes that originated outside Alaska and should have been terminated to GCI in Anchorage.

¹² ACS 2002 Annual Access Tariff Filing, D&J, Section 5, Part II.B. at 23.

¹³ ACS Opposition, WCB/Pricing 02-12 (filed June 28, 2002) at 2.

¹⁴ GCI Petition to Suspend and Investigate at 5.

With these estimates, GCI demonstrated a smoother demand trend over the time period selected by ACS, and that the forecast should be adjusted accordingly.¹⁵ Yet, ACS' new demand forecast is still far less than the reported actual demand for 2001, and it is also 23 million minutes less than the adjusted demand that GCI estimated based only on the limited historical information presented by ACS with its 2002 Annual Access Tariff Filing. Having adopted GCI's adjustment, it appears that ACS applied that adjustment in a new methodology for the sake of producing a lower demand figure than would have been produced with its past methodology.

Of course, ACS itself previously described that it considered "several regression forecasting techniques" in preparing in preparing its 2002 Annual Access Tariff Filing, and it has now apparently unveiled at least another one.¹⁶ ACS' changing of methodologies mid-stream while the instant investigation is pending to produce different results underscores that it is necessary to investigate the "several regression forecasting techniques" that ACS considered and still has *not* used to develop the test year demand forecast, and the results those methodologies would have produced if employed for the 2002 annual access tariff filing. In addition, the continued investigation is necessary for ACS to explain why it selected the linear regression model in developing tariffed rates for interstate access since 1995, but then discarded that approach for a new one today. Past performance illustrates that the instant tariff filing in the absence of a complete investigation does not resolve the substantial questions of lawfulness in connection with the forecasted demand for the July 2002-June 2003 test period. ACS' underestimation of demand in its 1998 Annual Access Tariff Filing by over 130 million minutes

¹⁵ Id. at 6 (graph).

¹⁶ See ACS Opposition at 5; ACS *Ex Parte* Notice, WCB/Pricing 02-12 (filed July 11, 2002).

annually while the tariff was in place produced overearnings during the same period in excess of 30 percent.¹⁷ Given the ACS history of significant overearnings and associated demand manipulations, this most recent shift in demand forecast methodology only underscores that an investigation is necessary to ensure that a sound methodology is employed and sound results are produced.

2. Having changed its forecast methodology, ACS still has failed to provide any documentation in support of the forecasting methodology. ACS has yet to produce the output of its new forecasting approach, or its first regression approach. Given the shift in forecasted minutes and the failure to produce this basic output, a continued investigation is plainly necessary to produce the underpinnings for these shifting techniques and resulting swings in the demand forecast.

In this regard, it is imperative that the Commission require ACS to submit its new forecasting methodology *and* the original linear regression model so that the Commission and interested parties can analyze the model as well as the access line independent variable employed by ACS in developing its original demand forecast. Without this information, the Commission and interested parties will be unable to assess the basis for the proposed demand figures, or any additional subsequent demand figures that ACS might propose still later during the investigation or the tariff period.

In addition, ACS apparently made certain adjustments to the CABS MOU inputs from April 1999-March 2002 used as inputs in its forecast methodology. First, ACS states that the reported amounts are “less the number of misdirected toll MOU due to local interconnection”

¹⁷ See GCI Petition to Suspend and Investigate at 7-8.

without any information regarding the amount of the adjustment or how the amount was identified.¹⁸ Second, ACS claims that “we know there was a promotional program in effect impacting MOU between November 2000 and the first part of June 2001,”¹⁹ implying that some adjustment was made, should have been made, or was not made for that reason, but with no explanation of the promotional program itself, who offered it, how minutes were affected, or what adjustment (or decision not to adjust) resulted from ACS’ unshared knowledge. This information should be produced in the pending investigation.

3. Finally, ACS’ new approach relies on flawed data. It appears from the D&J that ACS used MOUs per month to develop its latest demand estimate. When these monthly amounts are plotted, a “sawtooth” pattern emerges as the minutes vary from month to month, which variations will tend to skew a regression output. Based on the monthly minutes, ACS instead should have developed a normalized billing period based on billed minutes per day. Without the ACS forecast output, GCI has not been able to quantify the impact of this error compared to ACS’ result.

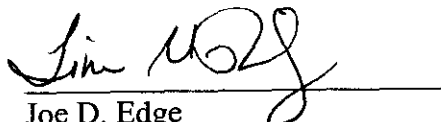
¹⁸ D&J at 1.

¹⁹ Id. at 2.

CONCLUSION

Based on the foregoing, ACS Transmittal No. 13 raises the same substantial questions of lawfulness as the suspended ACS Transmittal No. 11, and the Commission should suspend Transmittal No. 13 to investigate the respective tariffs in their entirety.

Respectfully submitted,



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Dated: July 29, 2002